

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 14, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on December 14, 2006, beginning at 10:05 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner John Lyon were present at the meeting. Commissioner Mike Joyner was not present.

MINUTES OF NOVEMBER 9, 2006 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the November 9, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the November 9, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order One, Chairman Fox asked Commissioner Lyon if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Lyon recused himself from #26, Fosters Saloon and First Offense Case #48, Jasons Deli Winston Salem. The two cases were carried over to the next Commission meeting. Chairman Fox stated that he had no conflicts.

I. HEARING CASES – 78

Chief Counsel Fred A. Gregory stated that there was a contested case #1, Minit Shop. Assistant Counsel Renee Cowick represented the Commission.

Ms. Renee Cowick briefly summarized the facts in the case. This hearing was held in Lumberton, North Carolina by Senior Administrative Law Judge Fred G. Morrison Jr. Ms. Cowick stated Judge Morrison decided that the alleged underage sale was not consummated and suggested that a written warning be issued. Ms. Cowick did not file exceptions to Judge Morrison's decision.

Chairman Fox made a motion to accept Judge Morrison's decision as to the written warning. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Michael Ream, proprietor of hearing case #48, Carrabbas Italian Grill, was present to speak on behalf of the business. Mr. Ream stated there were two separate issues. A young manager went to pick up the liquor order at the ABC Board and the order was not ready. Mr. Ream stated the manager drove around the building and walked into the same liquor store and bought two bottles of liquor. After the incident, the manager was put on a 30-day notice in which he would be terminated if he made any other mistakes.

Mr. Ream stated the second issue was the five bottles without tax stamps. Mr. Ream stated in June the business conducted inventory and at 2:00 a.m. the bartender and assistant manager found 17 bottles of liquor without tax stamps. Mr. Ream meant to deal with this but forgot about it. Mr. Ream stated that when the

officer came in about the incident involving the manager, he went behind the bar and found five more bottles without tax stamps. Mr. Ream stated they must have picked up an order from the ABC Board and the bottles were not stamped. Mr. Ream stated they had made some big mistakes.

Mr. Ream stated that Carrabbas was a neighborhood restaurant and had been open for 2½ years. The restaurant has made charitable contributions and raised hundreds of thousands of dollars within the community. Mr. Ream stated that liquor is 2.96% of their total sales and that money is not made off liquor. Mr. Ream asked the Commission to have his staff go through training or make the fine higher. Mr. Ream stated that losing their license for seven days would make his staff suffer the most because they count on the restaurant for their livelihood.

Chairman Fox made a motion to leave the penalty at \$4,000.00, no active suspension, with the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Stephen Leonard, proprietor of hearing case #16, Office, was present to speak on behalf of his business regarding the failure to supervise violation. Mr. Leonard stated he had been in business in Raleigh for three years and owned previous nightclubs in Charleston, South Carolina and Miami, Florida. Mr. Leonard stated that at the time of this violation he had a general manager and bar manager on duty. Mr. Leonard stated he conducted his own investigation and contacted one of the minors and had a signed affidavit from him.

Mr. Leonard stated that after being informed of the violation, he contacted Chief Lew Nuckles and Agent Wes Nipper and had a class for his staff on how to look for fake I.D.s. Mr. Leonard stated he pays underage people to try to come into his establishment to check his employees.

Mr. Leonard stated he was asking for leniency and possibly a written warning. The business had no prior violations with ALE or the City.

Chairman Fox made a motion to reduce the penalty to \$500.00 with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Greg Erwin, owner of an add-on hearing case #78, North Durham Mobil, was present to speak on behalf of his business.

Mr. Erwin stated he had not originally signed the Offer In Compromise because the cashier didn't think he had done anything wrong in the underage sale. Mr. Erwin stated he wanted to see how his court case in Durham County went. Mr. Erwin stated that all the stores had taken the training class.

Mr. Gregory stated that Mr. Ricky Anderson, First Offense case #19, Dunn Slip In, was present to speak on behalf of the business regarding an underage sale violation. Mr. Anderson stated this is the only store they own that sells alcohol and the only convenient store. Mr. Anderson stated that it was the first day of the employee who sold the malt beverage. The beverage was a Tilt energy drink and only at the bottom did it say anything about any percentage of alcohol. Mr. Anderson stated they have been through the alcohol training class and converted the cash register.

Mr. Anderson asked the Commission for a leniency in their fine. Mr. Anderson stated it was their first violation.

Chairman Fox asked Mr. Anderson if they had completed our class. Mr. Anderson said yes.

Chairman Fox made a motion to reduce the penalty to \$500.00 with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Fred A. Gregory stated that there was a request from the Green Turtle, hearing case #27, changing the suspension date from ten days to eighteen days in the Final Agency Decision. The Commission allowed this request.

Mr. Gregory stated that First Offense case #12 – Residence Inn Charlotte Uptown will be continued.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of contested case #1, Minit Shop, hearing case #48, Carrabbas Italian Grill, hearing case #16, Office, which had been earlier, ratified. Seconded by Commissioner Lyon. So Ordered.

II. FIRST OFFENSE CASES – 57 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on December 14, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Boardwalk Grill – 315 Sanford Drive, Morganton, NC 28655
2. Kroger R-332 – 3457 Hillsborough Road, Durham, NC 27705
3. Maggies Galley – 49 Howell Mill Road, Waynesville, NC 28786
4. Rushco Food Store 5 – 601 Jake Alexander Boulevard, Salisbury, NC 28144
5. Spellers Grille – 205 Sterlingworth Street, Windsor, NC 27983
6. Dish It Out – 7828-C Rea Road, Charlotte, NC 28277
7. El Tapatio 2 – 924 Conover Boulevard West, Conover, NC 28613
8. La Tea Das – 1942 East 7th Street, Charlotte, NC 28204
9. NC Express – 2205 South Sterling Street, Morganton, NC 28655
10. Mickeys Deli & Pub – 9229-14 Lawyers Road, Mint Hill, NC 28227
11. Phifers Hot Wings and BBQ – 1023 Shelton Avenue, Statesville, NC 28677
12. Residence Inn Charlotte Uptown – 404 South Mint Street, Charlotte, NC 28202
13. Snackers 245 – 108 Main Street, Franklinton, NC 27525
14. Star Mini Mart – 1830 New Bern Avenue, Raleigh, NC 27610
15. Pizza Hut 2555 – 1405 West Broad Street, Elizabethtown, NC 28337
16. Buffalo Fuels – 6927 Buffaloe Road, Raleigh, NC 27616
17. Bridgersville Convenience Store and Grill – 6502 NC Hwy 42 East, Elm City, NC 27822
18. Duck Thru Food Store 8 – 1300 East Memorial Drive, Ahoskie, NC 27910
19. Dunn Slip In – 427 Jonesboro Road, Dunn, NC 28334
20. El Korita Mexican Restaurant – 808 North Berkeley Boulevard, Goldsboro, NC 27534
21. Jacobs Food Mart – 1425 South Marietta Street, Gastonia, NC 28054
22. Justice Groceries – 3469 NC Hwy 581, Louisburg, NC 27549
23. La Bella Estrella – 5606 East Independence Boulevard – Suite 106, Charlotte, NC 28212
24. Monterrey Mexican Restaurant 12 – Park 51 Shops Center, Pineville, NC 28226
25. Pops – 810 West Peabody Street, Durham, NC 27701
26. Ricks Convenience Store – 6408 NC Hwy 10 West, Hickory, NC 28602
27. Save More 209 – 4611 Fayetteville Road, Lumberton, NC 28358
28. Anntonys Caribbean Restaurant – 2001 East 7th Street, Charlotte, NC 28204
29. Butts On The Creek BBQ – 1584 Soco Road, Maggie Valley, NC 28751
30. Carolina Prime Steakhouse – 225 East Woodlawn Road, Charlotte, NC 28217

31. Meadowbrook Inn – 711 Main Street, Blowing Rock, NC 28605
32. Miami Subs Grill – 4305 Fayetteville Road, Raleigh, NC 27603
33. Perrys Fast Mart – 2493 Schloss Road, Louisburg, NC 27549
34. Phillips 66 Kicks 6330 – 3308 NC Hwy 55, Durham, NC 27713
35. Rustys – 8512 Park Road – Charlotte, NC 28210
36. Shells Bar B Q – 2609 Springs Road, Hickory, NC 28601
37. Southside Seafood Market 2 – 624-A North Davidson Street, Charlotte, NC 28202
38. Sky Mart – 3211 Holden Beach Road SW, Supply, NC 28462
39. Triangle D #4 Food Mart – 403 West Trinity Avenue, Durham, NC 27701
40. Wilco 1854 – 4985 Old Tar Road, Winterville, NC 28590
41. Kangaroo Express 104 – 4835 Hope Valley Road, Durham, NC 27707
42. Kangaroo Express 3126 – 2865 Piney Green Road, Midway Park, NC 28544
43. Hilliardston Grocery – 1060 West Hilliardston Road, Nashville, NC 27856
44. Cubbies on Market – 6932 Market Street Unit H, Wilmington, NC 28411
45. Camp Wesley Grocery – 3320 Deal Road, Mooresville, NC 28115
46. Anna Marias Pizzeria – 670 North Churton Street, Hillsborough, NC 27278
47. Jacks Place 2 – 3539 Hwy 43 North, Greenville, NC 27858
48. Jasons Deli Winston-Salem – 1005 Hanes Mall Boulevard, Winston-Salem, NC 27103
49. La International Food Market – 635 Peters Creek Parkway, Winston-Salem, NC 27103
50. C Mini Mart 139 – 8321 Jenks Road, Apex, NC 27502
51. Stool Pigeons – 2233 Matthews Township Hwy Suite C, Matthews, NC 28105
52. Roys Grocery – 5344 Hwy 56 East – Castalia, NC 27816
53. Raceway 6739 – 1141 Lenoir Rhyne Boulevard, Hickory, NC 28602
54. Owens Express – 91 South Main Street, Granite Falls, NC 28360
55. Josephs – 5003 O’Quinn Boulevard Unit C-E, Oak Island, NC 28461
56. Everybody’s Grocery – 1022 Greenfield Street, Wilmington, NC 28401
57. Hound Ears Club – 328 Shulls Mill Road, Boone, NC 28607

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #19 Dunn Slip In, which had been earlier ratified. Seconded by Commissioner Lyon. So Ordered.

III. ABC STORE LOCATION – WOODFIN ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Buncombe County. On October 12, 2006, Jason Young, General Manager of the Woodfin ABC Board, requested approval to open an ABC Store in Woodfin. The Town of Woodfin approved ABC Stores and Mixed Beverages at an election on May 2, 2006. On October 27, 2006, ALE Agent Michael Penland began an investigation and found that the proposed store would be located at the intersection of Weaverville Road and Reynolds Mountain Boulevard. The proposed location is 142 Weaverville Road, Woodfin, North Carolina.

The property is currently owned by the Town of Woodfin. The Woodfin ABC Board has agreed to a 20-year lease of the property with the rent being \$3,000.00 a month for the first ten years and \$5,000.00 a month for the remaining ten years. There is an existing structure on the proposed site and it will be demolished upon approval of the store location by the ABC Commission. The construction of the new store has not been opened to bidding nor has a blueprint for the new construction.

The nearest church is the New Hope Christian Fellowship Church and is located .8 of a mile from the proposed location.

The nearest school is the Woodfin Elementary School and is located 1.4 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on October 19, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this new ABC Store.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store.

Chairman Fox made a motion to approve the new ABC Store location. Seconded by Commissioner Lyon. So Ordered.

IV. OTHER BUSINESS –

A. Angier ABC Store Location

Administrator Michael Herring addressed the Commission about receiving a letter on September 6, 2006, from Shirley Brinkley, General Manager of the Town of Angier ABC Board, requesting approval to relocate their store. This was originally scheduled for the October 12, 2006, Commission Meeting, but it was continued at the request of the Angier ABC Board. The Board originally wanted to pursue a location on recently annexed property in Wake County. Most of Angier is in Harnett County. After discussions with Mr. Herring, the Commission's Legal Division and the Attorney General's Office, the Angier ABC Board decided to stay in Harnett County.

Mr. Herring stated that Ms. Brinkley informed him they would like to proceed with their original request from September to build a new store. On September 6, 2006, ALE Agent Alan Fields investigated this site and he found that the proposed site was in the northwest corner of the intersection of North Raleigh Street which is NC 55 and W. Wimberly Street. The property is a vacant parcel of real estate and is adjacent to the Twin Oaks Square Shopping Center. There is currently no property address to this ABC Store.

The Angier ABC Board has not purchased the real estate but is negotiating. The property they are looking at is .64 acres and approximately \$12.00 per square foot or \$334,000.00. The Angier ABC Board plans to construct a 4,000 to 5,000 square foot building for the ABC Store and warehouse.

The property is owned by KKLM Associates, a family trust.

No conflict of interest exist between the Angier ABC Board and the property owner.

The proposed site is zoned HB (Highway Business) and properly zoned for an ABC store.

The nearest school is Angier Elementary School and is approximately .8 of a mile from the proposed site.

The nearest church is Christ Temple Holiness Church and is approximately .6 of a mile from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was posted on September 1, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store.

Commissioner Lyon made a motion to approve the new ABC Store location. Seconded by Chairman Fox. So Ordered.

B. Triad Municipal ABC Board

Administrator Michael Herring addressed the Commission concerning the Triad Municipal ABC Board. On September 12, 2006, the Town of Yadkinville in Yadkin County approved ABC Stores and Mixed Beverage sales. The Town Council voted to merge with the Triad Municipal ABC Board. In accordance with G.S. 18B-703, this merger needed approval by the Commission.

Mr. Herring recommended that the Commission approve the merger agreement.

The Triad Municipal ABC Board is currently made of the governing bodies of Winston-Salem, Clemmons, Kernersville, Lewisville, Oak Ridge (Guilford County) and Bermuda Run (Davie County). Mr. Herring stated he had the signed resolution concerning the merger.

Chairman Fox made a motion to approve the merger agreement. Seconded by Commissioner Lyon. So Ordered.

C. Commission Activity

Mr. Herring presented the Commission activity for the month of November, 2006. In November, the Permit Division received 604 applications compared to 610 applications in November, 2005. They issued 527 permits in November compared to 738 permits issued last year in the same month. The Product Compliance Division, which is part of the Permit Division, approved 462 wines compared to 230 wines last year. There were 20 beers approved in November and 23 beers last year. Moneys posted by the Commission from calendar year-to-date, resulted in \$14,353,853.00 going into the State's General Fund. The Legal Division received 89 violations in November compared to 23 violations last year. The Education Division presented 67 Responsible Alcohol Seller Programs to 478 participants. There were 125 consultation visits to programs in schools or civic organizations which effected 1,283 participants.

The warehouse has been active with shipments up 7,000 cases or 2% over last November with 361,591 cases shipped. Mr. Graham Thompson, Project Manager of LB&B Associates, gave projections for the month of December and projected 483,000 cases shipped out compared to 400,650 last year. Mr. Herring stated that December, 2005, was the first month that 400,000 cases had been shipped.

With no further business, the meeting adjourned.

Douglas A. Fox, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division